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will; that, in the absence of statutory provision to the contrary, such child is entitled to a proportionate share of the *corpus* of the testator's estate, and consequently may recover such portion by an action *in rem* against any party in possession.

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WOUND IN ONE STATE—DEATH IN ANOTHER—LEGIS-  
LATION NEEDED.

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In *State v. Hall*, 114 N. C. 909, 41 Am. St. Rep. 822, an extraordinary hiatus was shown to exist in our criminal procedure. The facts of the case were as follows: A, standing upon North Carolina soil, shot and killed a man in Tennessee. Being indicted (in a former proceeding) in North Carolina for this killing, it was held in accordance with a great array of authority, that the homicide did not occur in North Carolina, where the gun exploded, but in Tennessee where the bullet took effect.<sup>1</sup> Thereupon the Tennessee authorities sought to have him extradited, and the question before the court was whether such a case came within the scope of the United States Constitution, Art. IV, sec. 2, cl. 2, providing that "a person charged with treason, felony, or other crime, who shall *flee from justice* and be found in another state shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

The North Carolina court, it will be remembered, had already declared in the first prosecution that the criminal had committed the offense in Tennessee and not in North Carolina, that he was constructively present with his bullet in Tennessee at the time. Good sense and expediency would both dictate therefore that, being constructively present in Tennessee at the time of the killing, he must have constructively fled from Tennessee in order to be once more in North Carolina, and that he must be considered as falling within the scope of the constitutional provision above quoted. But the North Carolina court held that, never having been in Tennessee, he was not a fugitive from Tennessee, and could not be extradited.

<sup>1</sup> See *United States v. Guiteau*, 1 Mackey, 498, 47 Am. Rep. 247; *Simpson v. State*, 92 Ga. 41, 44 Am. St. Rep. 75, and extended note.

Thus the prisoner escaped punishment altogether for a most heinous crime.

In reaching this conclusion, the court but followed the current of authority. But it was still to be hoped that when the question should finally come before the Supreme Court of the United States, it would return to the reasonable and expedient interpretation of the constitutional clause, which would not permit such an egregious failure of justice. This hope, however, has been doomed to disappointment. The question has come before that august tribunal and has been determined in accordance with the conclusions reached by the other courts.<sup>3</sup>

At present, therefore, as the law now stands in Virginia and in most of the other states, a man who has an enemy in North Carolina, or in West Virginia, is at perfect liberty to stand in Virginia and shoot him down, provided the victim is across the state line. The only precaution he need adopt for his subsequent safety is to take care not to be found in North Carolina or in West Virginia.

It is true that the Code provides:<sup>4</sup> "If any person be stricken or poisoned in, and die, by reason thereof, out of this state, the offender shall be as guilty and be prosecuted and punished as if the death had occurred in the county or corporation in which the stroke or poison was given or administered." But it is clear that this does not apply to the case now under discussion. In the case supposed the party is not stricken nor the poison administered in this State, but in North Carolina or West Virginia.

It is to be hoped that the legislature in its revision of the Code will not fail to insert a provision, making the act of shooting or sending poison from this State whereby death or injury results in another state punishable just as if the death or injury had occurred here. An inconsiderable amendment of the section above quoted would suffice.

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<sup>2</sup> *Ex parte Smith*, 3 McLean, 133; *Jones v. Leonard*, 50 Ia. 106; *Hartman v. Aveline*, 63 Ind. 344; *In re Mohr*, 73 Ala. 503.

<sup>3</sup> *Hyatt v. Corkran*, 188 U. S. 691.

<sup>4</sup> Virginia Code, sec. 3687.